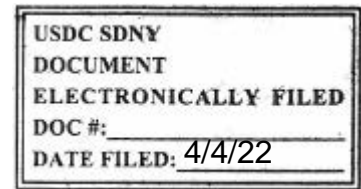


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



Jacqueline Schmidt,

Plaintiff,

—v—

Ollie Holdings, LLC,

Defendant.

21-cv-3533 (AJN) (SDA)

ORDER

ALISON J. NATHAN, Circuit Judge, sitting by designation:

On December 22, 2021, the Court referred Plaintiff’s motion for default judgment against Defendant to Magistrate Stewart D. Aaron. Dkt. No. 21. On January 12, 2022, Judge Aaron filed a Report & Recommendation recommending that the Court deny Plaintiff’s motion for default judgment against Defendant, that the Complaint be dismissed without prejudice for failure to adequately plead subject matter jurisdiction, and that Plaintiff be granted leave to file an amended complaint within 30 days of any adoption of Judge Aaron’s Report & Recommendation. Dkt. No. 26.

When considering the findings and recommendations of a Magistrate Judge, the Court may “accept, reject, or modify [them], in whole or in part.” 28 U.S.C. § 636(b)(1). The Court must make a *de novo* determination of any portions of a magistrate’s report or findings to which a party raises an objection, and reviews only for “clear error on the face of the record” when there are no timely objections to the Report & Recommendation. *Banks v. Comm’r of Soc. Sec.*, No. 19-cv-929 (AJN) (SDA), 2020 WL 2765686, at *1 (S.D.N.Y. May 27, 2020); *see also Brennan v. Colvin*, No. 13-cv-6338 (AJN), 2015 WL 1402204, at *1 (S.D.N.Y. Mar. 25,

2015); *Hicks v. Ercole*, No. 09-cv-2531 (AJN) (MHD), 2015 WL 1266800, at *1 (S.D.N.Y. Mar. 18, 2015); *Gomez v. Brown*, 655 F. Supp. 2d 332, 341 (S.D.N.Y. 2009). Clear error is found only when, upon review of the entire record, the Court is left with “the definite and firm conviction that a mistake has been committed.” *Laster v. Mancini*, No. 07-cv-8265 (DAB) (MHD), 2013 WL 5405468, at *2 (S.D.N.Y. Sept. 25, 2013) (quoting *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006)).

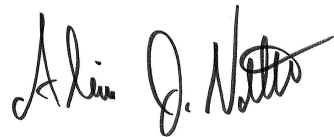
As of this date, no objection to the Report & Recommendation has been filed, and the deadline for objections has passed. Thus, the Court reviews the Report & Recommendation for clear error, and it finds none.

The Court therefore adopts the Report & Recommendation in its entirety and DENIES Plaintiff’s motion for default judgment against Defendant; the Complaint is dismissed without prejudice for failure to adequately plead subject matter jurisdiction. The Court GRANTS Plaintiff leave to file an amended complaint. If Plaintiff wishes to file an amended complaint, she must do so on or before **May 4, 2022**. Failure to do so will result in dismissal of the Complaint with prejudice.

This resolves docket number 19.

SO ORDERED.

Dated: April 4, 2022
New York, New York



ALISON J. NATHAN
United States Circuit Judge
Sitting by Designation